

# Notice of Allowability

Application No.

09/869,565

Examiner

Zachary C. Howard

Applicant(s)

GARDELLA ET AL.

Art Unit

1646

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 7/19/06.
2. ☒ The allowed claim(s) is/are 24-29, 32, 35, 38, 41 (re-numbered as claims 1-10).
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

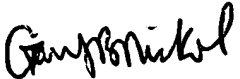
Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☒ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date 5/9/03; 11/6/03.
4. ☒ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_.
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

  
GARY B. NICKOL, PH.D.  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600

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### EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Danielle Letting on 8/29/2006.

The application has been amended as follows:

Applicants' claim amendments submitted 7/19/2006 have been entered.

In the 7/19/2006 set of claims, amend the claims as follows:

In claim 27, change current step (c) to step (d); and add the following new step (c): "(c) measuring cAMP accumulation in said cells; and"

In claim 28, change current step (c) to step (d); and add the following new step (c): "(c) measuring cAMP accumulation in said cells; and"

It is noted that the Examiner's amendments to the claims serve to clarify the claims.

In the specification, amend the title of the specification (page 1) to read:

"Screening assay utilizing the Pth receptor"

**EXAMINER'S COMMENT*****Requirement For The Deposit Of Biological Material***

The claims refer to ATCC Deposit No. PTA-1136. The Applicant Thomas J. Gardella submitted a Declaration on September 20<sup>th</sup>, 2004 concerning the deposit of biological matter. However, this Declaration is an insufficient assurance that all of the conditions of 37 CFR sections 1.801 through 1.809 have been met.

If the deposits were made under the provisions of the Budapest Treaty, filing of an affidavit or declaration by applicants, assignees or a statement by an attorney of record over his or her signature and registration number stating that the deposits have been accepted by an International Depository Authority under the provisions of the Budapest Treaty, that all restrictions upon public access to the deposits will be irrevocably removed upon the grant of a patent on this application and that the deposit will be replaced if viable samples cannot be dispensed by the depository is required. This requirement is necessary when deposits are made under the provisions of the Budapest Treaty as the Treaty leaves these specific matters to the discretion of each State. Additionally, amendment of the specification to recite the date of the deposit and the complete name and address of the depository is required.

In the instant case, the 9/20/2004 Declaration states that the deposits have been accepted by an International Depository Authority (specifically, the ATCC) under the terms of the Budapest treat and gives assurance that all restrictions on the availability to the public of the deposited plasmid will be irrevocably removed upon the granting of the patent, subject to C.F.R. § 1.808(b). However, the Declaration does not state that the deposit will be replaced if viable samples cannot be dispensed by the depository.

Applicant is required to correct this deficiency. The correction must be filed within the THREE MONTH shortened statutory period set for reply in the "Notice of Allowability" (PTO-37). Extensions of time may NOT be obtained under the provisions of 37 CFR 1.136. Failure to timely file will result in **ABANDONMENT** of the application. The transmittal letter accompanying the correction should indicate the date of the "Notice of Allowance" (PTOL-85) and the application number in the upper right hand corner.


Art Unit: 1646

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zachary C. Howard whose telephone number is 571-272-2877. The examiner can normally be reached on M-F 9:30 AM - 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary B. Nickol can be reached on 571-272-0835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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